presume that the alien is entitled to return under section 1104(c)(3)(B) of the LIFE Act, unless, in a removal or expedited removal proceeding, the Service shows by a preponderance of the evidence, that one or more of the provisions of §245a.11(d) makes the alien ineligible for adjustment of status under LIFE Legalization.

(4) If an alien travels abroad and returns without a grant of advance parole, he or she shall be denied admission and shall be subject to removal or expedited removal unless the alien establishes, clearly and beyond doubt, that:

(i) He or she filed an application for adjustment pursuant to LIFE Legalization during the application period that presented a prima facie claim to adjustment of status under LIFE Legalization; and,

(ii) His or her absence was either a brief and casual trip consistent with an intention on the alien's part to pursue his or her LIFE Legalization adjustment application, or was a brief temporary trip that occurred because of the alien's need to tend to family obligations relating to a close relative's death or illness or similar family need.

(5) An applicant for LIFE Legalization benefits who applies for admission into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.

(6) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue his or her application for adjustment from abroad, and may also appeal any denial of such application from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before June 4, 2003, stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§245a.18(a)(1) or (a)(2), or §§245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the alien's having filed a LIFE Legalization adjustment application.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§245a.14 Application for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit.

The Service will first determine whether an alien filed a written claim for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit as reflected in the Service's indices, a review of the alien's administrative file with the Service, and by all evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that, before October 1, 2000, he or she was a class member applicant in the *CSS*, *LULAC*, or *Zambrano* lawsuit. An alien should include as many forms of evidence as the alien has available to him or her. Such forms of evidence include, but are not limited to:

(a) An Employment Authorization Document (EAD) or other employment document issued by the Service pursuant to the alien's class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit (if a photocopy of the EAD is submitted, the alien's name, A-number, issuance date, and expiration date should be clearly visible);

(b) Service document(s) addressed to the alien, or his or her representative, granting or denying the class membership, which includes date, alien's name and A-number;

(c) The questionnaire for class member applicant under *CSS*, *LULAC*, or *Zambrano* submitted with the class membership application, which includes date, alien's full name and date of birth;

(d) Service document(s) addressed to the alien, or his or her representative, discussing matters pursuant to the class membership application, which includes date, alien's name and A-number. These include, but are not limited to the following:

(1) Form I–512, Parole authorization, or denial of such;

(2) Form I–221, Order to Show Cause;

(3) Form I–862, Notice to Appear;

(4) Final order of removal or deportation;

(5) Request for evidence letter (RFE); or

(6) Form I–687 submitted with the class membership application.

(e) Form I–765, Application for Employment Authorization, submitted pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

(g) Any other relevant document(s).

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.15 Continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988.

(a) *General.* The Service will determine whether an alien entered the United States before January 1, 1982, and resided in continuous unlawful status since such date through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

(b) *Evidence.* (1) A list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

(2) The following evidence may establish an alien's unlawful status in the United States:

(i) Form I–94 (see § 1.4), Arrival-Departure Record;

(ii) Form I–20A–B, Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students;

(iii) Form IAP–66, Certificate of Eligibility for Exchange Visitor Status;

(iv) A passport; or

(v) Nonimmigrant visa(s) issued to the alien.

(c) *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(2) The alien was maintaining residence in the United States; and

(3) The alien's departure from the United States was not based on an order of deportation.

(d) *Unlawful status.* The following categories of aliens, who are otherwise eligible to adjust to LPR status pursuant to LIFE Legalization, may file for adjustment of status provided they resided continuously in the United States in an unlawful status since prior to January 1, 1982, through May 4, 1988:

(1) An eligible alien who entered the United States without inspection prior to January 1, 1982.

(2) *Nonimmigrants.* An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

(i) *A or G nonimmigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A–1,